

J. Alan Smith, Private Citizen
8166 Barranca Rd.
Payson, Arizona 85541
(928) 951-2083 Wk.
In Propria Persona

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Before the Arizona Corporation Commission

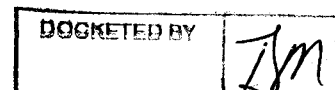
COMMISSIONERS

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

AUG 01 2012



J. Alan Smith, Injured Party
Complainant,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.
Respondents.

DOCKET NO. W-03514A-12-0007

**MOTION TO COMPEL RESPONDENTS
TO COMPLY WITH COMPLAINANT'S
1ST SET OF DATA REQUESTS**

NOW COMES, the Complainant J. Alan Smith, to Motion the Administrative Law Judge and the Commission to Compel the Respondents' to comply with the Complainants' First Set of Data Requests to resolve issues of Discovery and Disclosure per ARS 10 § 1632, 1633; AAC R14-3-109 (K), (L), (Y) & (Z).

On July 9, 2012 Respondent Hardcastle mailed to the Complainant his First Set of Data Requests which the Complainant received on or about July 12, 2012.

On July 19, 2012 the Complainant mailed his responses to Respondent's First Set of Data Requests.

On July 16, 2012 the Complainant mailed by certified mail his First Set of Data Requests to Respondent Hardcastle. Respondent received the Data Requests on July 20, 2012 (**See: Attached Exhibit A**). It has been Eleven (11) days since Respondent received the Data Requests and he has failed or refused to comply or respond.

On July 16, 2012 the Complainant mailed his Direct Testimony.

There has never been expressed or noticed to Complainant of any restriction on the filing of any Data Requests on the same day of filing of Direct Testimony. The Data Requests can not be shown to be untimely filed.

The Data Requests are relevant, material and applicable to the matters in this Docket and proceedings.

Questions, related in whole or in part to Brooke Utilities, Inc. or Payson Water Co. are within the scope of inquiry in this Docket proceedings as Brooke Utilities, Inc. and Payson Water Co. have not been excepted, excluded or "deleted" from the Complaint by order of the Commission or the Administrative Law Judge.

Nearly every document requested in the Data Requests the Respondents have in their immediate possession and direct access to. Respondents have ignored and absolutely refused to produce any response and have concealed documentation without justifiable cause or excuse.

The documentation and corporate records requested are extremely relevant, material and directly related to the Water Augmentation Period and the long trail of misrepresentation made by the Respondents to the Commission, the Complainant, Customers and others whom have been made to suffer financial injury and harm for Corporation profits.

The Respondent "may not claim privilege for corporate records, in every such case the records kept are not within the protection of the self-incrimination privilege." **Shapiro v. United States, 335 U. S. 1, 58 (1948)** "required records are also not protected by the 5th Amendment privilege against self-incrimination **Craig v. Bulmash, 777, P.2d 1120 (Cal. 1989)** "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restriction validly established" **Shapiro v. United States, 335 U. S. 1, 58 (1948) Id at 33.**

"All that is necessary is that the records be relevant to an investigation that is within the agency's authority." **Redding Pine Mills v. State Bd., 320 P.2d 25 (Cal. App. 1958) State v. Mees, 49 N.W.2d 386 (Minn. 1951).**

The Complainant began investigating the wrongful Termination of Service in June 2011 and along with other Customers the Water Augmentation Surcharge and revised Curtailment Plan after the first billing period in July 2011. The investigation warranted the "Informal Complainant" and the "Formal Complainant."


Respondents have in hand evidence in support of the allegations and the Complainant's position. There are other Exhibits attached to the "Formal Complaint" and other disclosures submitted in these proceedings.

However, the information and documentation requested in Complainant's Data Request is necessary for his case and further disclosure by the Respondents is necessary. Too many documents have been concealed both in Mr. Gehring's case and in this one. Why are the Respondents so afraid of making full disclosure and particularly disclosure of the remaining invoices and hauling logs from Pearson Water Co? Could it be because those invoices and hauling logs reveal further proof that water was hauled to East Verde Park and billed to Mesa del Caballo Customers or that water was hauled out of Mesa del Caballo to East Verde Park?

The Complainant for all of the reasons, stated herein and above requests of the Commission and the Administrative Law Judge to compel the Respondents to comply with Complainant's First Set Data Request.

The evidence the Respondents have knowing and intentionally concealed must be disclosed.

Respectfully submitted this 31st day of July, 2012



J. Alan Smith, in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Motion have been mailed this 31st day July, 2012 to the following:

DOCKET CONTROL
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing Motion have been mailed this 31st day July, 2012 to the following:

Robert T. Hardcastle
P. O. Box 82218
Bakersfield, Ca. 93380

By: J.A.S.

J. Alan Smith,
8166 Barranca Rd
Payson, Arizona [PZ 85541]
(928) 951-2083

July 16, 2012

Robert T. Hardcastle
Brooke Utilities, Inc.
Payson Water Co. Inc.
P.O. Box 82218
Bakersfield, Ca. 93380

In RE: ACC Docket No. W-03514-A-12-0007

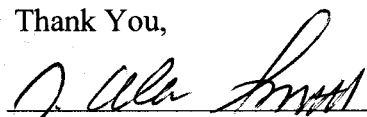
Mr. Hardcastle:

Please find attached herein the Complainant's **First Set of "Data Requests"** pursuant to AAC R14-3-109, ARCP Rules 26 and 33.

Your responses to these Data Requests and Interrogatories are due not later than Seven (7) days following receipt of them.

These Data Requests are ongoing and continuing and your answers and responses or documents supplied in response to these requests should be accompanied with any additional information, records, documents or other printable materials that are associated with your answers and responses or that would otherwise come to your attention upon your answers and responses. Please do not conceal any items, records or documents as that may cause for you to be held in contempt of the Commission or cause for you much embarrassment at trial?

Thank You,


J. Alan Smith

J. Alan Smith Private Citizen,
vs.
PAYSON WATER CO. INC./BROOKE UTILITIES INC.
DOCKET NO. W-03514A-12-0007

Complainant's 1st Set of Data Requests and Interrogatories to Robert T. Hardcastle

INSTRUCTIONS:

1. The Data Requests and Interrogatories request all information including printed documents and data stored in computers or on electronic media that relate to the matter of the Data Request and is known and available to you in any form.
2. Respondents are requested in their answers to provide all available information without concealment, editing or blackout available from your records, officers, employees, agents and contractors.
3. A complete response is required to each corresponding question or subpart separately.
4. Data Requests are continuing and may require supplemental responses upon acquisition of additional information.
5. If you cannot answer the Data Request in full or in part state the answers as best you can and state the information you have concerning the unanswered portion.
6. If you believe any Data Request is ambiguous explain why it is ambiguous and your interpretations in responding to the Data Request.
7. If you refuse to respond to any Data Request please state your religious or legal foundation for refusal to respond and the type of privilege you claim and reason for refusing to respond.

DEFINITIONS

ACC: Arizona Corporation Commission.

Apportion: To divide and assign in proportion; to distribute among two or more apart or share to each.

Augmentation: The act of increasing or making larger by addition, expansion, or dilation; the act of adding to or enlarging; the augmentation of territory is the act of adding other territory to it. **Vejar v Mound City L & W Asso, 97 Cal 659, 32 P 713.**

BUI: Brooke Utilities Inc.

CC&N: Certificate of Convenience and Necessity.

Comparison: The act of bringing together for the purpose of observing not only likenesses, but differences as well. **Succession of Baker, 129 La 74, 82, 55 So 714.**

Compare: 1) to liken; 2) to examine for similarities or differences; 3) to form the degrees of comparison

Comparison: 1) a comparing or being compared; 2) likeness; similarity; 3) change in a adjective or adverb to show the positive, comparative, and superlative degrees in comparison with, compared with.

Document: writings, records, reports, drawings, books, photos, accounting statements, electronic media etc. of every kind in your possession or available to you.

DR: Data Request

Identify: In reference to any person (natural or artificial) please give their a) name, b) address; c) telephone number(s); relationship to Respondents.

MDC: The Community of Mesa del Caballo.

MDC WC: Mesa del Caballo Water Committee.

Prorate: To divide or distribute proportionately; to assess pro rata. **Rosenberg v Frank, 58 Cal 387,405.**

Pro rata: In proportion; proportionately according to the share, interest, or liability of each person concerned. **Home Ins. Co. v Continental Ins. Co 180 NY 389, 73 NE 65.** In proportion to some rate of standard, fixed in the mind of the person speaking or writing, manifested by the words spoken or written, according to which rate or standard the allowance is to be made or calculated. **Rosenberg v Frank, 58 Cal 387, 406.**

Proportion: A part; a share. Equality, between rations.

Proportional Rate: One carrier's part, of a through rate over the lines of two or more carriers. **Hocking Valley R. Co. v. Lackawanna Coal & Lumber Co. (CA4 W Va.) 224 F 930.**

PWC: Payson Water Co. Inc.

Supplemental: Added to supply a deficiency, or defect.

DATA REQUESTS:

1.0: According to Payson Water Co. Inc., 2007 to 2010 Annual Reports the Mesa del Caballo System ADEQ PWS 04-030 lists Seven wells in production and Three other wells as sources of water: a) JO 55-588967; b) Behm 55-560398; and c) ECC 04030 i.e. Water Sharing Partner aka Water Sharing Agreement.

1.0.1: Please produce copies of the Water Sharing Agreements between Payson Water Co. Inc., or Brooke Utilities, Inc. and: a) Lisa Harmon or John Olson for Well No. 55-553798; and b) El Caballo Club well No. 55-585747 and any records of payment to the well owners for the Behm Well 55-560398, JO 55-588967; Lisa Harmon or John Olson Well No. 55-553798; El Caballo Club 55-585747 for the years 2002 through 2011.

1.0.2: Please explain why the following wells are not now nor have they been in production from at least 2007 through 2012 and why nothing has been done by the Company to bring them back into production:

1. 55-801698 on (Tract E) 302-34-423 ;
2. 55-801699 on (Lot 17) 302-34-33B;
3. 55-63112 on (Lot 17) 302-34-33A;
4. 55-531101 (Registered to United Utilities) on 8095 E. Barranca Rd.;

1.0.2.1: If the Customer is allowed only 97 gallons per day, then over a 30 day period that equals 2,910 gallons. Under what part of the Curtailment Plan do you derive the authority to shut my water off for using 4,000 gallons a month, (30) days that is equal to 133.33 gallons per day?

1.0.2.2: Produce copy of the check from Brooke Utilities, Inc. or Payson Water Co. Inc. to reimburse the Customer.

1.0.2.3: Can the Company's meter determine the difference between indoor and outdoor water use?

1.0.2.4: Can it distinguish between actual use and a break in the water line?

1.0.2.5: In 2010 the Respondents contracted with Zonge Engineering and Southwest Ground-Water Consultants, Inc. to conduct a study to determine the locations of underground water reserves and essentially the best locations in MDC to drill for water. According to that study and results Two (2) primary Sites were selected by the Respondents to drill deep wells (approximately 1,200ft. deep). Deep Well Drilling was presented to the Public as an alternative solution in the July and August 2011 Public Meetings.

The locations of the proposed "Deep Wells" are at or almost identical to the sites of BUI/PWC Wells No. 55-801698 on (Tract E) 302-34-423 ; 55-801699 on (Lot 17) 302-34-33B; 55-63112 on (Lot 17) 302-34-33A that have been out of production since 2007 or longer. Please explain why the Company has never invested the money to deepen these wells or drill new ones or "Hydro-Frack" any of the wells that have decreased in production to increase production knowing full well after the study that there existed a high probability of success in drilling to depths of 400 to 1,000 ft?

1.0.2.6: If your Driller Brandon Moore said Hydro-Fracking is a "crap shoot" did he substantiate his opinion with any documentation and did you bother to consult with another Driller like Chris Miller who does Hydro-Fracking with excellent positive results and who in fact Hydro-Fracked Well No. 55-631113 prior to Brooke's ownership of the System? If not, why not?

1.0.2.7: You made representations at the Hearing held on June 26 and 27, 2012 that the studies conducted as referenced above in DR 1.0.2.5 were not promising or economically feasible. Was that not a misrepresentation of material fact?

1.0.2.8: Can you produce an expert opinion to confirm your claims? Is your opinion based on your highly inflated cost projections submitted at the public meetings that you and the MDCWC sponsored to hedge your Customers towards the C. C. Cragin Pipeline project? Please explain in detail?

1.0.3: Why do the Respondents in their Annual Reports 2006 to 2010 list the well at Lot 164 (8170 Gunsight Ridge) Well No. 553798 Registered to Lisa Harmon; as a well owned and operated as a U. S. Geological Survey well on the San Pedro River in Cochise County and in your Well Production Reports of 2009 to 2011 as 55-558967 a well that is Registered to Bill Huddelston and never drilled (Lot 26 Vista del Norte) and do not list that well as a WSA well under its proper well number designation?

1.0.4: In you Annual Reports for 2007, 2008, 2009 and 2010 you list a well referred to as "JO 55-588967" in your Report of "Other Water Sources" and that you purchased or obtained an average of 5,000,000 gallons per year from this well. Please explain how you purchase water from a U. S. Geological Survey "Monitor Well" located in Cochise Co. on the San Pedro River and transport it to the MDC System and please provide copy of the Water Sharing Agreement?

1.1: In a letter from the El Caballo Club, members and Water Committee not dated but Post Marked May 5, 2010 they claim the Community has a "meager and dwindling supply of water" and that they "established percentages of usage to further assist in making sure that each household has adequate water" and that "the geophysical and hydrological studies don't look too promising." Do you agree with these statements? If so please explain? If not please explain?

1.1.2: Can you explain why certain documentation submitted by you and by Mr. Gehring in Mr. Gehring's and the Jones Complaint at the Hearing on June 26 and 27, 2012 confirm beyond any reasonable doubt that water was hauled to the East Verde Park System and billed to your Customers in the Mesa del Caballo System?

1.1.3: Can you explain why there was an average daily surplus of water in the amount of 8,731 gallons per day during the entire Augmentation period of 2011 and why hauling water was even necessary?

1.1.4: How much water was actually hauled to the East Verde Park System during the Augmentation Period of 2011?

1.1.5: Provide copy of the Contract or Agreement between Payson **Water Co. Inc. or Brooke Utilities, Inc. and Pearson Water Co.** to haul water to supplement or augment any of the Payson Water Co. Inc. Systems.

1.2: According to your Well Production Reports for 2009 through 2011 and the corresponding worksheets produced by Mr. Gehring, Mr. Burt and myself that were submitted as evidence in Docket No. W-03514A-12-0008 at the Hearing of June 26 and 27, 2012 during the "Augmentation Billing Period" your wells and the Water Sharing Agreement wells produced 6,106,080 gallons which your own evidence confirms and according to your documents submitted in evidence at the Hearing the "Revised Consumption" of the MDC System was 5,345,294 gallons. The difference being that there existed an 824,231 gallon Surplus of water throughout the entire 2011 "Augmentation Billing Period."

1.2.1: Do you have a massive leak in the Mesa del Caballo System that you have neglected or refused to repair?

1.2.2: Did you or Mr. Allred instruct Pearson Water Co. and its owner and employees to haul water out of the MDC System to other locations?

1.2.3: Can you produce any evidence that the hauling of 701,900 gallons of water to the MDC System during the 2011 Augmentation Period was even necessary? If so, please produce it?

1.2.4: Please provide copy of Payson Water Co. Inc. Certificate of Conveyance and Necessity?

1.2.5: You made representations to the Commission in 2005 that the water shortage in the MDC system is comparable to the Pine and Strawberry water shortage. Please provide any documentation that the now PSWID has a water shortage and still hauls water to supplement the system and that they did not have to make extensive repairs and drill new wells where you claimed there was no water.

1.2.6: Produce and provide all documentation that a water shortage in the MDC system has increased since 2005 where you were granted an economic penalty to impose on Customers of the MDC system.

1.3: In 2010 as part of the Curtailment Tariff you persuaded the Commission to increase the economic penalty for various Stage Violations. Please provide any documentation that supports a justification to impose any economic sanctions on the Customers of the MDC system for failure to comply with Stages 3 through 5.

1.4: Please provide documentation and accounting for all Curtailment Tariff Fines and Reconnection Fees used to offset the purchase and hauling of water for the years 2009, 2010 and 2011.

1.5: Please provide documentation that would justify keeping the entire Community of MdC at a Stage 3 level from May of 2009 until November of 2011 and provide proof that your public notices were given and posted for any other stage during that period.

1.6: Referencing the PWC 2009 MDC system Annual Report. That report shows that PWC sold 17,346,000 gallons. The total water purchase and the pumped water show 16,570,800 gallons. Provide the documentation and the accounting method used to sell more water (775,200 gallons) than you pumped and purchased from Water Sharing Agreement Wells or any other source.

1.6.1: Please provide the accounting method used to show the difference between purchased water and hauled water.

1.7: Referencing the PWC 2010 MDC system Annual Report. That report shows that PWC sold 14,714,000 gallons. The total water purchased and pumped show 15,172,000. Please provide the documentation and the accounting method used to purchase and produce more water (458,000 gallons) than you sold; explain the surplus via worksheet; and why BUI/PWC had to haul water to the MDC System during 2010.

1.7.1: On page 8 under Comparative Statement of Income and Expense Item "Acct. No. 610" Purchased Water shows a total water purchase of \$24,322.00. Provide a worksheet of the "Hardcastle Method" to haul water when well production exceeded gallons sold.

1.7.2: On page 8 under Comparative Statement of Income and Expense Item "Acct. No. 675" Miscellaneous Expense" please provide an explanation of that expense and please explain what is meant by Non-System Expenses and what those expenses are for?

1.8: Provide a detailed management guideline by BUI/PWC that is used to monitor water levels of the MDC System for the sole purpose of moving from Stage 1 thru any other Stage and back again.

1.8.1: Provide a detailed management guideline by BUI/PWC that is used in conjunction to haul water in the event that the system goes into Stage 3 thru 5.

1.8.2: Provide a detailed management guideline by BUI/PWC that is used to stop the hauling of water.

1.8.3: Provide a copy of all phone calls, emails, records or contact with Pearson Water Co. by any of BUI or PWC agents or employees particularly Mr. David Allred for the dispatch of water tankers to haul water to the various systems needing Augmentation for the Augmentation Period between May and October 2011.

1.9: Provide all records or documents of any verbal agreements or written contracts between BUI or PWC and Pearson Water Co. for the specific purpose of hauling water for Payson Water Co. Inc. Water Systems.

1.10: Please explain why, your Annual Reports for 2010 and 2011 show no water purchases for the EVP System or other Systems and only to the MDC System when in fact water was hauled to the EVP System in both of those years.

1.10.1: Please produce a copy of the "Water Use Data Sheet by Month for Calendar year 2011" for the Mesa del Caballo System and explain why it was left out of PWC's Annual Report?

1.11: All of the Water Storage Facilities were originally set up by UMAS/United Utilities so that the Fire Department could access them in times of a Fire Emergency. Once BUI obtained the MDC System you denied the Fire Department access to those water resources for Fire Emergencies. Please explain and justify why you have denied them access after obtaining the System?

1.11.1: As part of your plan to either Drill Deep Wells or connect to the C. C. Craigen Pipeline you have budgeted or included in your estimates of cost \$221,000.00 for a 200,000 gallon Storage Facility. Is it that facility necessary and is it your intention to deny the Fire Department access to those additional resources for fire suppression purposes as well?

1.11.2: Is the estimated cost of the Storage Facility the actual cost or does it include a built in profit margin?

1.12: Upon PWC's application to the ACC for approval of a Water Augmentation Surcharge Tariff you submitted various Invoices from Pearson Water Co. for the hauling of water from distant locations including Indian Creek, Tonto, Starlight, Gisela to Mesa del Caballo and East Verde Park.

1.12.1: Please produce documentation confirming the exact locations and name of the Systems where water was obtained from Indian Creek, Tonto, Starlight and Gisela and explain why you hauled water from such distant locations instead of from your Star Valley System or the Town of Payson.

1.12.2: Please provide record of total costs to haul water just to the MDC System for the years 2009 through 2011?

1.12.3: Pearson Water Co. charges \$150.00 per hour to haul while other Transport Companies charge \$80.00 to \$85.00 per hour. Has the Company tried to contact other Transport Companies to get better rates? If not, why not?

1.12.4: Please provide copies of Invoices No. 8805, 8806, 8809, 8810, 8813, 8814, 8817, 8818, 8820, 8821, 8824, 8825 and their corresponding "BUI Hauling Logs"?

1.13: Provide a full and complete Copy of your Emergency Procedures Manual.

1.14: Provide copy of the notice presented to the Company by the ACC to turn the Complainant's water back on and provide an explanation as to why you or the Company refused to turn it back on.

1.14.1: Provide proof of the Stage when the meter was read including the time and date.

1.14.2: At what time on June 6, 2011 was water hauling initiated during Stage 3?

1.14.3: Identify the time, date and employee, who turned the water off.

1.14.4: Produce any documentation that any attempt was made by the Company to notify the Customer in person or by telephone that the Service was to be terminated.

1.14.5: Where is the Customer Service Center located for Payson Water Co. Inc. or Brooke Utilities, Inc. and who is the Director or Superintendent of the Customer Service Center?

1.14.6: Identify "High Water Use" for Customers of the MDC System and does the Company have a policy to notify Customers of High Water Use by Mail or any other means.

1.14.7: Since BUI and Payson Water Co. Inc. acquired the MDC System from United Utilities how often has the hauling of water been necessary and for what reasons and how much money has been spent to haul water since 2009.

1.14.8: Produce documentation evidencing the cost of water hauling for the years 2005 through 2011.

1.14.9: What are the current "Static Levels" of the Company and WSA Wells in the MDC System and how do they differ from the 2009 levels?

1.14.10: At the Hearing held on June 26 and 27, 2012 in Docket No. 03514A-12-0008 Mr. Allred claimed the MDC System is “dilapidated” and that “aging wells” are not capable of keeping up with Customer Consumption.

1.14.10.1: If the System is “dilapidated” why has the Company not made improvements or conducted necessary maintenance to upgrade or repair the System to make it more efficient and productive?

1.14.10.2: If the System is “dilapidated” and “aging wells” are not as productive as they have been in the past then why hasn’t the Company cleaned the wells out by “Hydro-Fracking” and acquired a second opinion on the issue of “Hydro-Fracking” from someone who does “Hydro-Fracking” like Chris Miller of Aero Drilling in Payson?

1.15: Who is responsible for the collection of fines and their disperse or application to offset Water Augmentation costs, who is responsible for the refunds of fines and provide identification of the “interest bearing trust account” set up by the Company to collect and disperse the funds. Provide proof that such funds were dispersed to off set Augmentation Costs.

1.15.1: Do the costs to haul water between 2009 and 2011 exceed the actual and un-inflated cost to drill a well 400 to 900 feet?

1.16: Provide documentation that the Aquifer under Mesa del Caballo is inadequate to maintain water for the Customers of Payson Water Co. Inc. MDC System.

END OF 1ST SET OF DATA REQUESTS TO HARDCASTLE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert T. Hardcastle
P.O. Box 82218
Bakersfield Ca 93380

2. Article Number
(Transfer from service label)

7

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i>	<input type="checkbox"/> Agent
B. Received by (Print Name) <i>[Signature]</i>	<input type="checkbox"/> Addressee
C. Date of Delivery <i>2/20/12</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

D. Is delivery address different from item 1?
If YES, enter delivery address below:

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise

☐ Yes
☒ No

2595-02-M-1540